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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
14

15 **STEPHEN ESCONDON MEDINA,**

16 Plaintiff,

17 v.

18 **R. HUESO,**

19 Defendants.
20
21

Case No.: 08 CV 0896 JLS (RBB)

**DECLARATION OF T. EMIGH IN
SUPPORT OF DEFENDANT'S
MOTION TO DISMISS THE
COMPLAINT**

Hearing: September 15, 2008
Time: 10:00 a.m.
Courtroom: B
Judge: The Honorable Ruben B. Brooks

22 I, T. Emigh, declare as follows:

23 1. I make the following declaration of facts based on my own knowledge and, if
24 called, can testify competently thereto.

25 2. I have worked for the California Department of Corrections and Rehabilitation
26 (CDCR) for 21 years and am currently employed by CDCR as the Assistant Chief of Inmate
27 Appeals Branch, Sacramento, California which receives all inmate appeals submitted to the Third
28 or highest level. I have personal knowledge of the facts contained herein, and, if called to testify,

1 I could and would competently testify thereto.

2 3. CDCR has a comprehensive administrative appeals system for prisoner
3 complaints, described in title 15 of the California Code of Regulations, section 3084, et seq.
4 California Code of Regulations title 15, section 3084.1(a) provides that inmates may appeal any
5 departmental decision, action, condition, or policy which they can reasonably demonstrate as
6 having an adverse effect upon their welfare. In order to exhaust this process, the inmate must
7 complete four levels of appeal: (1) attempted informal resolution; (2) first formal level appeal;
8 (3) second formal level appeal to the institution head or designee; and (4) third level appeal to the
9 Director of Corrections.

10 4. Final review and decision by the Inmate Appeals Branch, also known as the
11 "Director's Level" or "Third Level" appeal, concludes the inmate's administrative remedy
12 process. All inmate appeals accepted by the Inmate Appeals Branch for Third Level review are
13 processed through my office.

14 5. Upon receipt, all Third Level appeals are logged into a computer database. The
15 computer database tracks all properly filed inmate appeals received since 1993, which are then
16 accepted by the Inmate Appeals Branch and adjudicated at the Third Level. A tracking system
17 for appeals *rejected* by the Office of the Inmate Appeals Branch was also established in August
18 of 2000.

19 6. I am personally familiar with the record keeping system at the Inmate Appeals
20 Branch, and I am able to verify the status of a California inmate's Third Level administrative
21 appeal.

22 7. This Office received a request from the Office of the Attorney General to research
23 our system files to locate any and all Third Level Inmate Appeals that have been
24 accepted/screened out by Inmate STEPHEN MEDINA, CDCR No. E-63667. A thorough search
25 by my staff of records kept in the ordinary course of business in the Office of the Inmate Appeals
26 Branch in Sacramento, California, revealed Inmate Medina filed two inmate appeals that were
27 received and either accepted or screened out at the Third level of review. The first, appeal IAB #
28 0509356 (Institution Log No. CCI-05-04091), was accepted for review on February 21, 2006,

1 and was denied on May 10, 2006. This appeal involved a property complaint. Because Plaintiff
2 received a response at the Third Level denying his appeal, this appeal is exhausted. The second,
3 appeal # IAB # 0717720 (No Institutional Log No.), was received by my office on December 24,
4 2007. However, this appeal was *not* accepted for review and was screened out on February 1,
5 2008, because the appeal was either rejected, withdrawn, or canceled. This appeal involved a
6 complaint against staff. Because this appeal was not accepted for review at the Third Level of
7 Review, it is unexhausted.

8 8. A true and accurate copy of the Inmate/Parolee Appeals Tracking System
9 - Level III, for Inmate Medina, is attached hereto as Exhibit 1.

10 I declare under penalty of perjury under the laws of California and the United
11 States of America that the foregoing is true and correct.

12 Executed on August 7, 2008, at Sacramento, California.

13
14 
15 T. EMIGH, Assistant Chief, Inmate Appeals Branch

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17
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19
20
21 7/12/08 1:00pm

22 8/12/08 7:00pm

EXHIBIT A

Inmate Appeals Branch

07/18/2008

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
Inmate / Parolee Appeals Tracking System - Level III

Appellant Appeal History

CDCR Number: E63667

Sorted By: CDCR Number

CDCR Number	Appellant Name	Location	Arrival Date	Alerts (Type, Start, End)	Special Needs		
E63667	MEDINA, STEPHEN	CAL	08/10/2006				
<u>Accepted Appeals</u>							
IAB Number	Issue	Issue Subcategory	Accepted Date	Inst. Log Number	Due Date	Closed Date	Disposition
0509356	PROPERTY	Prior to subcategory	02/21/2006	CCI-05-04091	05/17/2006	05/10/2006	DENIED
<u>Screen Outs</u>							
IAB Number	Issue	Issue Subcategory	Received Date	Inst. Log Number	Screened Out	Response Due	Reason
0717720	STAFF COMPLAINTS		12/24/2007		02/01/2008		APPEAL REJECTED/WITHDRAWN/CAN

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Medina, Stephen Escondon v. R. Hueso, et al.**

No.: **08CV0896 JLS RBB**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266.

On August 12, 2008, I served the attached **DECLARATION OF T. EMIGH IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

Stephen Escondon Medina
E-63667
Calipatria State Prison
P. O. Box 5005
7018 Blair Road
Calipatria, CA 92233-5005

In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 12, 2008, at San Diego, California.

D. Daswani

Declarant


Signature

70133318.wpd